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DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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House Bills 4206-9 (As Introduced)

Topic: Building Official Conflict of Interest
Sponsor: Representative Stakoe
Co-Sponsors: None listed
Committee: House Local Government and Urban Policy

Date Introduced: February 3, 2005

Date Enrolled:

Date of Analysis: February 7, 2005

Position: The Department of Labor & Economic Growth supports the bills.

Problem/Background: Section 10 of the Building Officials and Inspectors Registration Act prohibits an inspector from inspecting his or her own work in a governmental subdivision. Performing instructional duties for educational purposes and providing contractual inspection and consulting services in construction code enforcement are specifically exempted from the conflict of interest provision. Section 10 permits a local government to establish additional requirements and restrictions in the selection and hiring of enforcement officials. The Electrical Administrative Act and the Forbes Mechanical Contractors Act do not directly address this issue. Both of these statutes preceded the building officials and inspectors registration law. The rewrite of the State Plumbing Law in 2002 contained a strong conflict of interest provisions.

Description of Bill: House Bill 4206 amends Section 10 of the Building Officials and Inspectors Registration Act. The other bills amend the State Plumbing Act, the Electrical Administrative Act, and the Forbes Mechanical Contractors Act by inserting language referring to Section 10 of the Building Officials and Inspectors Registration Act.

The new language in House Bill 4206 prohibits conflict of interest and defines conflict of interest as the following:

- A registrant is directly or indirectly connected with a business in which he or she is employed or acting as an inspector, plan reviewer, or building official regarding that business.
- A registrant has an interest directly or indirectly in any written or verbal contract affecting the construction of any building or structure or the furnishing of materials, appliances, equipment, or labor affecting the construction of the building or structure.

- A registrant has a personal ownership interest in all, or a portion of, the business entity performing the work in the construction of a building or structure for which the registrant is making decisions in the administration and enforcement of codes or standards.
- A registrant conducts inspections in a construction project in which the registrant or the construction company employing him or her sought work.

The bill requires an enforcing agency to report to the chief elected official a claim of conflict of interest within 30 days after it is reported to or identified by the enforcing agency. The chief elected official is required to conduct an investigation and file a report of its findings with the Bureau of Construction Codes and Fire Safety within 30 days after receiving the report.

If the enforcing agency's investigation determines a conflict of interest, it is required to remove the registrant from responsibility for administration and enforcement of the code on the specific project in which a conflict of interest has been determined.

Upon receipt of information that an enforcing agency has failed to investigate a facially valid conflict of interest claim or has failed to take appropriate action, the Bureau of Construction Codes is required to conduct a performance evaluation of the enforcing agency and report its findings in writing to the State Construction Code Commission. The bill allows a person to file a complaint with the bureau requesting a performance evaluation if he or she believes the enforcing agency has failed to investigate or take the appropriate action.

The bills are tie-barred.

Summary of Arguments

Pro: Construction Code Inspectors are currently allowed to be employed simultaneously as both construction contractors/workers and governmental construction code inspectors. This creates a situation where construction code inspectors are competing with licensed contractors whom they also regulate. Such situations contribute to accusations of conflict of interest against inspectors who appear to be in a favorable regulatory position: first, with respect to the capability to retaliate and find fault with the work of their competitors, and, second, with respect to the rigorousness of the evaluation of the inspector's construction work by other code officials.

The current requirement in 1986 PA 54 prohibits an inspector from inspecting the work that he/she performs on construction projects. This standard does not go far enough and does not address the potential conflict of interest issue regarding code officials competing with the contractors they regulate.

Con: The bill may impose a hardship on smaller communities where there is insufficient building activity to justify hiring a full time inspector.

Response: Options are available for these communities. These include hiring a retired inspector, collaborating with nearby jurisdictions, or hiring inspection services from a private firm.

Fiscal/Economic Impact

(a) Department

Budgetary: No budgetary impact to the department is anticipated.

Revenue: The bill will have no revenue impact on the department.

Comments:

(b) State

Budgetary: No budgetary impact on the State is anticipated.

Revenue: State revenues will not be affected.

Comments:

(c) Local Government

Comments: No direct financial impact on local governments is anticipated.

Other State Departments: No other state departments will be affected.

Any Other Pertinent Information: These bills are the outcome of discussions in 2004 between the bill sponsor, DLEG, and various stakeholders. Representative Stakoe introduced 5062 to clarify language in the new State Plumbing Law related to conflict of interest.

Administrative Rules Impact: New or revised administrative rules should not be required.